IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 12 OF 2006

Mauvin Godinho,
r/o S-1, Bldg. No.20,
Kamat Kinara,
Caranzalem, Goa. ... Applicant

versus

S T A T E
(Through Public Prosecutor) ... Respondent

Mr. Shiresh Gupte, Senior Advocate with Mr. S. G. Bhobe, Advocate for the Applicant.

Ms. W. Coutinho, Public Prosecutor for the State/Respondent.

CORAM : N. A. BRITTO, J.

DATE : 28TH JULY, 2006.

ORAL ORDER

Heard Mr. Shiresh Gupte, the learned Senior Counsel on behalf of the applicant/accused and Ms. W. Coutinho, the learned Public Prosecutor on behalf of the

respondent/complainant. The applicant/accused is before this Court for the second time. It appears that the applicant/accused was an elected Member of the Goa Legislative Assembly from 15-12-1989 to 15-12-1994 and again from 13-1-1995 to 10-2-1999 and yet again from 9-6-1999 to 27-2-2002. The applicant/accused was a Cabinet Minister from 16-12-1994 till 29-7-1998 and again from 24-11-1999 to 24-10-2000. The Assembly was dissolved on 27-2-2002. It is stated that the applicant/accused was not a M.L.A./public servant between 15-12-1994 to 13-1-1995 and again from 10-2-1999 to 9-6-1999.

2. It further appears that in the year 1998 a case against the applicant/accused was investigated in connection with loss caused to the Government to the tune of Rs.4,52,77,865/- and in the course of the said investigation house search of the applicant/accused was conducted and several documents pertaining to the assets of the applicant/accused were seized. It was the allegation against the applicant/accused that he possessed assets disproportionate to his known source of income to the tune of approximately Rs.55,37,844-27 for the check period from 1-4-1994 to 16-5-2001 for which he could not

satisfactorily account for and as such Crime No.39/2001 was registered against the accused for committing offences punishable under Section 13(2) r/w (1)(e) of the Prevention of Corruption Act, 1988. Although the check period was from 1-4-1994 to 16-5-2001 it appears that the fact that the applicant/accused was not a M.L.A./public servant between 10-2-1999 to 9-6-1999 and 15-12-1994 to 31-1-1995 was not considered.

3. The accused having been prosecuted for the aforesaid offences, arguments were heard before the framing of charge against the applicant/accused by the learned Special Judge, Panaji and the learned Special Judge, Panaji ordered framing of charge against the applicant/accused, against which both the parties approached this Court in criminal revision applications. In disposing of the said revision applications, this Court had occasion to observe that in the event the applicant/accused was permitted to produce additional material the right of the respondent/State to further investigate would remain unhampered and in case an application was moved by the State seeking permission for further investigation, the learned Special

Judge,Panaji was required to decide the same in accordance with law.

4. The matter was again considered by the learned Special Judge, Panaji and vide Order dated 10-3-2006, the learned Special Judge came to the conclusion that there was prima facie material on record to indicate that the accused was in possession of assets which were disproportionate to his known source of income. It appears that the periods, referred to hereinabove, during which the applicant/accused was not a M.L.A. and, therefore, not a public servant were not brought to the notice of the learned Special Judge and, therefore, the said periods were also not considered by her.

5. One of the grievances made by the applicant/accused, at the time of seeking his discharge, before framing of charge, before the learned Special Judge, was that the applicant/accused's application dated 13-5-2002 was not at all considered and which was required to be considered in the light of sub-section(e) of Section 13 of the Prevention of Corruption Act, 1988. In fact, in the said application dated 13-5-2002 the

applicant/accused had clearly stated that he was prepared to explain to the Investigating Officer, along with his Chartered Accountant about the transactions which had taken place, during the said check period. On behalf of the respondent-State an affidavit has been filed before this Court dated 28-6-2006. Referring to the said application of the accused dated 13-5-2002, wherein the applicant/accused had stated that he would like to be heard along with his Chartered Accountant to clarify various points regarding his assets and income, on behalf of the respondent-State, it is stated that they are willing to hear the applicant/accused afresh along with his Chartered Accountant and all relevant documents which may be presented before the Superintendent of Police, Crime Branch. On behalf of the respondent-State permission is also sought so that the applicant/accused is heard along with his Chartered Accountant.

6. The learned Public Prosecutor on behalf of the respondent-State has also submitted before this Court upon instructions from the I.O. Shri Bosco George who is present, that in case the Investigating Agency is not satisfied with the explanations given by the applicant/accused along with his

Chartered Accountant then a fresh charge-sheet will be filed against the applicant/accused and in the event the explanations to be given by the applicant/accused are found satisfactory then necessary steps would be taken to close the case.

7. In the light of the stand taken on behalf of both the parties there is no other option left before this Court except to allow the revision application and set aside the impugned Order dated 10-3-2006 of the learned Special Judge, Panaji and discharge the accused for the present under Section 13(2) r/w Section (1)(e) of the Prevention of Corruption Act, 1988 with liberty to the respondent-State as aforesaid. The Investigating Officer should complete the investigations one way or the other within a period of three months.

N. A. BRITTO, J.

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